

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF U.S. 60 WATER DISTRICT OF)	
SHELBY, SPENCER AND FRANKLIN COUNTIES)	
FOR COMMISSION APPROVAL OF A SPECIAL)	CASE NO. 2000-303
CONTRACT FOR A WATER MAIN EXTENSION)	
ALONG JEPHTHA KNOB ROAD)	

ORDER

U.S. 60 Water District of Shelby, Spencer and Franklin Counties ("U.S. 60 Water District") has submitted for Commission review and approval a contract with Eddie Raizor of Shelbyville, Kentucky, for a water main extension. The proposed contract differs from the provisions of Administrative Regulation 807 KAR 5:066, Section 11. Finding that the proposed contract is reasonable and that good cause exists to permit a deviation from Administrative Regulation 807 KAR 5:066, Section 11, we approve the contract.

U.S. 60 Water District, a water district organized under KRS Chapter 74, provides retail water service to Shelby, Spencer, Franklin and Anderson counties, Kentucky. It has entered an agreement with Eddie Raizor for a water main extension to serve a 24-lot subdivision located along Jeptha Knob Road in Shelby County, Kentucky. The proposed extension has two phases. In the first phase, U.S. 60 Water District will construct 3,370 linear feet of 6-inch water main and install a constant pressure pump at an estimated cost of \$127,390. In the second phase, the water district may construct an additional extension of 1,300 linear feet of 6-inch water main.

Under the terms of the agreement, U.S. 60 Water District will assume \$36,666.64 of the cost of the first phase of the construction. Raizor assumes the remaining cost of the first phase of construction. He further agrees to secure all easements for the proposed water main extension, to donate real estate upon which the water district may locate a water storage tank, and to waive any right to any refund on his contribution should additional applicants for service within Raizor's proposed subdivision connect to the water main extension.

The proposed agreement's provision related to refund of Raizor's contribution is inconsistent with Administrative Regulation 807 KAR 5:066, Section 11(3), which provides:

An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

Under this regulation, U.S. 60 Water District is required to refund to Raizor the cost of 50 feet of the proposed water main extension for each applicant within the subdivision that connects to that main extension. The water district's rate schedules also require such refund.¹

¹ See U.S. 60 Water District of Shelby and Franklin Counties, PSC Ky. No. 3, Original Sheet No. 12 (issued Mar. 21, 1990).

In support of the proposed agreement, U.S. 60 Water District argues that Raizor knowingly and voluntarily waived his right to any refunds for connections within his subdivision. It has submitted a sworn affidavit from Raizor in which he attests to his knowledge of the Commission's regulation and the water district's main extension policies and states his knowing and voluntary decision to waive his rights. Raizor further states that his waiver was in part due to the water district's agreement to assume a portion of the water main extension's costs.

Proof of a voluntary, willing and knowing waiver of any right must be more than the statement of one of the parties involved. See generally 28 Am. Jur. 2d Estoppel and Waiver §225 (2000). The statements of the District and the affidavit from Mr. Raizor meet the standard for a knowing waiver.

U.S. 60 Water District further argues that Raizor receives greater benefit under the proposed agreement than under Administrative Regulation 807 KAR 5:066, Section 11(3). The proposed agreement requires U.S. 60 Water District to pay \$36,666.34 of the construction costs. Under the Commission's regulation, the water district would initially assume only \$24,570.77 of the construction cost. U.S. 60 Water District further notes that Raizor does not waive his right to any refund on his contribution should additional applicants for service outside the proposed subdivision connect to the water main extension.

The Commission notes that in similar cases where a customer receives some additional benefit from his waiver of rights under Administrative Regulation 807 KAR 5:066, Section 11, and where the likelihood of additional recovery of his contribution is small, a deviation from the requirements of Administrative Regulation may be

appropriate. See, e.g., West Laurel Water Association, Inc., Case No. 2000-097 (Ky. P.S.C. May 9, 2000). Given these cases and based upon the applicant's knowing and voluntary waiver of his right to refunds under Administrative Regulation 807 KAR 5:066, Section 11(3), we find that good cause exists to permit a deviation from that regulation² and that the proposed contract should be approved.

IT IS THEREFORE ORDERED that:

1. U.S. 60 Water District is authorized to deviate from Administrative Regulation 807 KAR 5:066, Section 11(3), and to use a different arrangement to extend water service to the subdivision that Raizor owns and that is located along Jeptha Knob Road in Shelby County, Kentucky.

2. The proposed contract between U.S. 60 Water District and Raizor is approved as of the date of this Order.

² The Commission is authorized to permit a water utility to make water main extensions under arrangements that differ from those established in Administrative Regulation 807 KAR 5:066, Section 11. Administrative Regulation 807 KAR 5:066, Section 11(4), provides:

Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have received the prior approval of the commission.

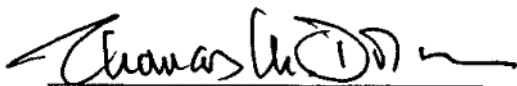
Administrative Regulation 807 KAR 5:066, Section 18, provides:

Deviations from Administrative Regulation. In special cases, for good cause shown, the commission may permit deviations from this administrative regulation.

Done at Frankfort, Kentucky, this 9th day of October, 2000.

By the Commission

ATTEST:



Executive Director